

BQC - 91 – 044

Date: July 8, 1991

To: Nursing Homes

NH 19

From: Larry Tainter, Director  
Bureau of Quality Assurance

Subject: HCFA's Perspective on "Negative Outcome" and Deficiency Citation

Our office has received the enclosed program letter, entitled "Deficiency Citation and Negative Outcomes" from the Health Care Financing Administration. Because this program letter defines and exemplifies HCFA's perspective, and its directions to state survey agencies, on the relationship between negative outcome and deficiency citation, we recommend it be read carefully. We believe that this program letter, by noting the following, validates the manner in which bureau surveyors have been instructed to cite:

-Actual negative outcome to a resident need not occur before a deficiency can be cited;

-The potential for a negative outcome requires consideration when evaluating the severity of a situation. The potential for a negative outcome can lead to a deficiency citation.

If you have questions concerning this program letter, please contact your Field Operations Manager or Milt Stearns, Chief, Long-Term Care Section, at (608) 267-7157.

LT/BH/jh 8728

cc: -BQC Staff  
-Office of Legal Counsel  
-Ann Haney, DOH Admin.  
-Kevin Piper, BHCF Dir.  
-HCFA, Region V  
-Illinois State Agency  
-Ohio State Agency  
-Michigan State Agency  
-Indiana State Agency  
-Minnesota State Agency  
-WI Coalition for Advocacy  
-Service Employees International Union  
-WI Counties Assn.  
-WI Medical Records Assn. Cons. Committee  
-WI Assoc. of Homes and Services for Aging  
-Comm. on Aging, Ext. Care Fac./HH (SMS)  
-WI Assn. Nursing Homes  
-WI Assn. of Medical Directors  
-Admin., Div. of Care and Treatment Facilities  
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DEPARTMENT OF HEALTH & HUMAN SERVICES

Health Care Financing  
Administration

Refer to: **CO8**

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Facilities Regulation  
Section

Region V  
105 West Adams Street  
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**June 1991**

**Division of Health Standards and Quality Regional Program Letter  
No. 91-28**

**Subject: Deficiency Citation and Negative Outcomes**

We have been advised that States are being challenged for citing valid deficiencies in the absence of readily identifiable negative outcomes. In the event that such challenges have created any uncertainty about the propriety of enforcing the Medicare/Medicaid Skilled Nursing Facility (SNF)/Nursing Facility (NF) requirements, we offer the following as clarification of national policy.

The long term care survey process, as currently described in Appendix P of the State Operations Manual, is a "resident-centered, outcome-oriented inspection which relies on a case-mix stratified sample of residents." The standard survey of a SNF or a NF is composed of resident-centered tasks. Surveyors are instructed in Appendix P to extend a standard survey when poor outcomes of sufficient frequency and severity indicate non-compliance with one or more of the following Level A requirements: Resident Rights, Resident Behavior and Facility Practices, Quality of Life and Quality of Care. Thus, there is the inference that poor outcomes must exist, in order for there to be non-compliance with these Level A Requirements. They are themselves resident-centered and outcome-oriented. It is assumed that if surveyors follow the Appendix P procedures, the process itself will assist surveyors to identify negative outcomes.

Appendix P instructs surveyors to record negative information throughout the survey and then to review and analyze all information and determine whether the facility has a deficiency in one or more of the regulatory requirements. Appendix P also states:

"A deficiency is defined as observed problems of sufficient severity and/or frequency so as to identify the facility as responsible, and require some form of corrective action by the facility."

Note that the definition states "observed problems"---not negative outcomes. There is no federal regulation or procedure currently in effect, which mandates that there must have been a negative outcome before surveyors can cite deficiencies. The Federal Register dated February 2, 1989, page 5317 in the Preamble to the Requirements for Long Term Care Facilities states: "...we wish to be certain that the public realize that all requirements for certification must be met by nursing facilities if they are to avoid some measure of adverse action." The Preamble also states on page 5318: "...all of the nursing facility requirements are binding and are not part of a qualitative hierarchy, while at the same time recognizing that violations of these requirements (depending on their type or severity) may be remedied through the different enforcement mechanisms available to the Department."

It was never the intent that surveyors have their hands tied in their endeavor to enforce the long term care requirements. Under no circumstances should a surveyor hesitate to cite a deficiency that clearly exists, due to the fact that the surveyor cannot identify a negative outcome. It must be assumed that the failure of a facility to comply with these outcome-oriented requirements when evaluated under our outcome-oriented survey process will, in itself, result in a negative outcome to resident care. The potential for a negative outcome can also be cited as a deficiency. We do not wait for a fire in a facility to cite a non-functioning fire alarm system. Similarly, we should not wait for a resident to be harmed by poor facility practices before acting to prevent it through deficiency citation.

For example, knowledge that a facility does not employ qualified nurse aides results in a deficiency at 42 CFR 483.75(g), since it must be assumed that the employment of poorly trained and unqualified aides has the potential to result in a negative outcome in resident care. Surveyors should not feel that they must have evidence that a resident suffered as a result of care provided by an unqualified aide before citing a deficiency.

Another example is the resident who wanders. A determination that a facility has not taken adequate measures to protect a wandering resident results in a deficiency. Recorded incidents of elopement, coupled with a facility's failure to assess the situation and respond accordingly warrants a prompt deficiency citation. Surveyors are not required to document a resident injury or death from wandering before citing the deficiency. The potential for injury or death from wandering is in itself a negative outcome for which the facility is clearly responsible, and which clearly necessitates corrective action by the facility.

Federal requirements at 42 CFR 483.10(b)(1) require facilities to inform residents both orally and in writing in a language that the resident understands of his or her rights, responsibilities and rules and regulations governing resident conduct. Failure to do so results in a deficiency. Surveyors are not expected to "prove" that residents were harmed by the failure of the facility to abide by this very basic and long-standing requirement before citing a deficiency.

A fourth example is the facility, which is determined through a standard survey not to reposition residents who are confined to their beds or wheelchairs. Surveyors do not have to document deformities arising out of the lack of such care before citing. This again would be one of those "observed problems of sufficient frequency and/or severity so as to identify the facility as responsible, and require some form of corrective action by the facility" (i.e., a deficiency).

We believe that surveyor adherence to the concept of extent and severity will alleviate meaningless or frivolous deficiencies. Before citing deficiencies, surveyors should evaluate the extent and severity of the problem and consider how the problem either does or has the potential to impact adversely on the facility's residents. The bottom line is, however, that all of the Federal requirements for SNFs and NFs went into effect on October 1, 1990. All of those requirements are to be enforced, and all certified providers are required to comply with them.

Further guidance on the survey process and deficiency citation is anticipated in the final enforcement regulations. Thus, we expect some change in regard to the process itself. However, there will be no deviation from the expectation that participating SNFs and NFs comply with all Federal requirements.

Questions or comments should be addressed to Gwendolyn Michel at (312) 886-5211, Sally Jo Wieling at (312) 353-8853 or your program representative.



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